



REPUBLIC OF KENYA



KENYA LAW
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**Njeru v Gisheko (Environment and Land Case E014 of 2020)
[2025] KEELC 5881 (KLR) (16 July 2025) (Judgment)**

Neutral citation: [2025] KEELC 5881 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND CASE E014 OF 2020**

AK BOR, J

JULY 16, 2025

BETWEEN

ENOS MUGENDI NJERU PLAINTIFF

AND

GISHABO GISHEKO DEFENDANT

JUDGMENT

1. The Plaintiff filed the plaint dated 2/7/2020 seeking a declaration that the Defendant is a trespasser on his parcel of land known as Embu/Kamarandi/223 (suit land) and that he was in occupation of the land illegally, unlawfully and without any colour of right. He sought an order requiring the Defendant to vacate and deliver up vacant possession of the suit land. In the event that the Defendant failed to comply with the court order, he sought to have the Officer Commanding the Ishiara Police Station ordered to ensure compliance with the order by forcefully ejecting or evicting the Defendant, his servants or agents from the suit land and apprehend anyone in breach of the said order as well as costs of the suit.
2. The Plaintiff's claim is that he is the *bona fide* purchaser and owner of the suit land free of any encumbrances. That he purchased the land from Lawrence Muriuki Njeru in November 2019 for valuable consideration. He averred that the Defendant took him to the suit land where the Plaintiff confirmed that there was no one in occupation or possession and that the suit land was vacant. The Defendant transferred the land to him and he was issued with a title deed on 28/2/2020.
3. The Plaintiff averred that on 3/3/2020, accompanied by Lawrence Muriuki, they visited the suit land and found the Defendant constructing a house on the land. He claimed that the Defendant armed himself with a bow and arrow and chased away the Plaintiff and the people who had accompanied him. He averred that efforts to evict the Defendant from the suit land proved futile.
4. The Defendant filed a defence in which he averred that he was not in occupation of the suit land but occupied the neighbouring parcel of land known as Embu/Kamarandi /224 which is adjacent to the



suit land. He clarified that the suit land was the subject of litigation in Embu ELC Case No. 214 of 2014 where the land was awarded to Ngari Kabingu through adverse possession. He denied that the Plaintiff visited his land and added that he had been in occupation of that land since 1969. He explained that the suit land was fully occupied by Ngari Kabingu in 1969 and was not unoccupied as the Plaintiff urged. He contended that he had been wrongly joined in the suit adding that the Plaintiff has did not have a cause of action against him.

5. The case was heard on 7/5/2025 when the Plaintiff gave evidence and adopted his witness statement. He purchased the suit land from Lawrence Muriuki in 2019. Before he paid the full purchase price, he carried out due diligence and confirmed that there was no occupant on the suit land. He did a search and did not find any encumbrances registered against the land. They attended the Land Control Board (LCB) at Ishiara and the land was transferred to his name and a title was issued to him in February 2020.
6. In March 2020 he went to the suit land with the vendor and found the Defendant constructing a house on the land. They approached him but he became hostile and chased them away from the property. He enlisted the assistance of the Government surveyors to determine the boundary issue but every time they try to visit the suit land the Defendant chases away the surveyors. He produced copies of the search done on 27/7/2023, title deed and demand notice dated 11/3/2020.
7. On cross examination, he stated that the seller told him that he had a case, No. 57 of 2008. He was shown the decree issued on 25/7/2019 in Embu ELC Case No. 214 of 2014 and he confirmed that the Defendant in that case was Lawrence Muriuki who sold him the suit land. The decree showed that the land was given to Ngari Kabingu. He was not a party to that suit. He confirmed that parcel number 223 was adjacent to parcel number 224. He claimed that he knew the boundaries between 223 and 224 and that the Defendant removed the beacons. He came to learn that the Defendant was given parcel number 224 after buying the land in 2019. He produced a copy of the sale agreement dated 10/3/2019.
8. The Plaintiff called Lawrence Muriuki to give evidence. He confirmed that he was the former owner of the suit land which he sold in 2020. He was given the land by his late father Njeru. According to him, his father's clan known as Mbari ya Njiru Igamatau won Embu ELC Case No. 214 of 2014 hence the Plaintiff in that case did not have a claim against him as he belonged to A-Mbeere clan which lost the dispute. He disputed the service effected in Embu ELC Case No. 214 of 2014 and added that he did not know that their advocates withdrew from acting for the Defendants in that case.
9. He argued that the Plaintiff was not bound by the judgment in Embu ELC Case No. 214 of 2014 since he was not a party to that case. He denied that Ngari Kabingu ever occupied the suit land currently registered in the Plaintiff's name. He maintained that due process was followed in terms of entering into a sale agreement, applying for LCB consent and execution of the necessary transfer documents.
10. On cross examination, he stated that he did not know about ELC Case No. 214 of 2014 and did not know that that case was determined. The decree indicated that the suit land was given to Ngari Kabingu who had sued him. He claimed that the Plaintiff occupied both parcel numbers 223 and 224. He confirmed that parcel numbers 223 and 224 shared a boundary.
11. The Defendant gave evidence and told the court that the Plaintiff did not occupy the suit land as he claimed. He was one of the Plaintiffs in Embu ELC Case No. 214 of 2014 where they sought to be declared to have become entitled to parcel numbers 223, 224, 225 and 226 through adverse possession. That he was allocated parcel number 224 while Ngari Kabingu was given parcel no. 223. He was emphatic that he was wrongly sued since he occupied parcel no. 224 but not 223, which is the suit land.
12. He maintained that the sale of the suit land to the Plaintiff was void for having taken place after the delivery of the judgment in ELC Case No. 214 of 2014. He added that the effect of the judgment was



- that the title over the suit land was extinguished and Ngari Kabingu was declared to be the new owner of parcel number 223. Based on this, Lawrence Muriuki could not legally transferred that land to the Plaintiff.
13. The court directed parties to file and exchange written submissions which it has considered. The Plaintiff submitted that he was an innocent purchaser for value and relied on *Dina Management Limited v County Government of Mombasa & 5 Others* Petition No. 8 (E010) of 2021 and referred to *Samuel Kamere v Land Registrar, Kajiado* on the point that he had proved that he was an innocent purchaser for value. He submitted that he entered into a valid contract with Lawrence Muriuki and was duly registered as proprietor of the suit land. He urged that the green card confirmed an unbroken chain of ownership.
 14. The Plaintiff submitted that his title was protected by Sections 24 and 26 of the *Land Registration Act* and that he purchased the suit property from its registered proprietor in good faith without any knowledge of any impropriety or fraud. He relied on *Katende v Haridar & Company Limited* (2008) 2 EA 173 on the ingredients of a *bona fide* purchaser for value and urged that he had met the prescribed requirements. He sought a permanent injunction against the Defendant.
 15. The Defendant submitted that the Plaintiff did not lead any evidence placing him on parcel number 223. He urged that survey report produced by the Plaintiff showed that he was occupying parcel number 224. He submitted that had the Plaintiff conducted proper due diligence before purchasing the suit land, he would have discovered that the land was the subject of litigation. He refuted the claim that the Plaintiff was an innocent purchaser for value without notice.
 11. The issue for determination is whether the Plaintiff is entitled to the orders sought. The Plaintiff seeks to have the Defendant declared a trespasser on the suit land and for him to be ordered to vacate the land and deliver up vacant possession. Although the Plaintiff demonstrated that he is the registered proprietor of the suit land, the key question is whether the Defendant has indeed trespassed on the suit land. The Defendant denied being in occupation of the suit land and maintained that he resided on the adjacent parcel being Embu/Kamarandi/224. The Plaintiff did not adduce any evidence to prove that the Defendant had trespassed on the suit land. The Plaintiff's witness, Lawrence Muriuki Njeru, confirmed that the Defendant lives on parcel 224 which buttresses the Defendant's claim. It is trite law that he who alleges must prove. Section 107 of the *Evidence Act* places the burden of proof on the person who desires the court to give judgment in his favor. The Plaintiff, having alleged trespass, bore the burden of proving that the Defendant had unlawfully entered and remained on the suit land.
 12. The other important issue raised by the Defendant is the suit land was given to Ngari Kabingu in Embu ELC 214 of 2014 through adverse possession. According to the Defendant, it is the family Ngari Kabingu that reside on the suit land. A copy of the judgment in that case was produced in these proceedings. That judgment raises questions as to whether the Plaintiff acquired a clean title over the suit land. Be that as it may, this court is not persuaded that the Defendant has trespassed on land parcel 223 as alleged.
 13. The Plaintiff has failed to demonstrate that the Defendant is in possession or occupation of the suit land. The suit is dismissed with costs to the Defendant.

DELIVERED VIRTUALLY AT EMBU THIS 16TH DAY OF JULY 2025.

K. BOR

JUDGE

In the presence of: -



Ms. Murigi Muriithi for the Plaintiff

Ms. P. Kimathi holding brief for Mr. Fundi Kimanzi for the Defendant

Diana Kemboi- Court Assistant

